

JACOBSON, RUSSELL, SALTZ, NASSIM & DE LA TORRE, LLP

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL JOHNSON,

Plaintiff,

vs.

ON-SITE MANAGER, INC.,

Defendant.

Case No.: 5:15-cv-04409-BLF

**DEFENDANT ON-SITE MANAGER,
INC.'S ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

Complaint filed: September 23, 2015

First Amended Complaint filed:

January 5, 2016

Trial Date: None

Judge: Hon. Beth L. Freeman

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Defendant ON-SITE MANAGER, INC. ("Defendant") through its undersigned counsel, hereby answers the First Amended Complaint filed by Plaintiff MICHAEL JOHNSON.

1. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 1 and on that basis must deny.

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2. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 2 and on that basis must deny.

3. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 3 and on that basis must deny.

4. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 4 and on that basis must deny.

5. Defendant admits it “regularly conducts business in the Northern District of California, and has a principal place of business at 307 Orchard City Drive, Suite 110, Campbell, CA 95008.” On information and belief, Defendant lacks sufficient knowledge to either admit or deny the remaining allegations set forth in Paragraph 5 and on that basis must deny.

6. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 6.

7. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 7.

8. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 8.

9. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 9.

10. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 10.

11. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 11.

12. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 12.

13. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 13.

14. Defendant hereby reaffirms, realleges, and incorporates herein by this reference the admissions and denials as set forth in paragraphs 1-13 of this Answer.

15. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 15 and on that basis must deny.

16. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 16 and on that basis must deny.

17. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 17 and on that basis must deny.

18. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 18.

19. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 19.

20. Defendant hereby reaffirms, realleges, and incorporates herein by this reference the admissions and denials as set forth in paragraphs 1-19 of this Answer.

21. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 21 and on that basis must deny.

22. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 22 and on that basis must deny.

23. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 23 and on that basis must deny.

24. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 24.

25. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 25.

26. Defendant admits that Plaintiff demands a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because, at all material times, Defendant acted reasonably, in good faith and without malice based upon all relevant facts and circumstances known by Defendant at the time.

THIRD DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because Defendant satisfied all obligations that it had, if any, under applicable law.

FOURTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's recovery is limited in whole or in part by Plaintiff's failure to mitigate his alleged damages and also by the doctrine of avoidable consequences and all similar and equivalent doctrines.

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FIFTH DEFENSE

To the extent, if any, that Plaintiff seeks to recover for any alleged harm that is outside of the applicable statute of limitations, such claims are barred by the applicable statute of limitations.

SIXTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because Plaintiff did not suffer any cognizable damage or other harm as a proximate result of any act or omission of Defendant.

SEVENTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because the alleged losses or harms sustained by Plaintiff, if any, resulted from the acts or omissions of Plaintiff or from causes other than any act or omission by Defendant.

EIGHTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because the alleged losses or harms sustained by Plaintiff, if any, resulted from causes other than any alleged act or omission by Defendant or its agents or employees, including but not limited to acts or omissions by third parties.

NINTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because Defendant's conduct was privileged.

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TENTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because Defendant's conduct was mandated by law.

ELEVENTH DEFENSE

Defendant is informed and believes, and thereon alleges that assuming, *arguendo*, any of the unlawful conduct alleged by Plaintiff occurred, such unlawful conduct was not perpetrated by a managing agent of Defendant, nor did any managing agent of Defendant ratify the alleged unlawful conduct.

TWELFTH DEFENSE

Defendant is informed and believes, and thereon alleges that, to the extent Plaintiff seeks civil or statutory penalties, or punitive or statutory damages, such claims violate the Fifth, Eighth, Fourteenth and Amendments of the United States Constitution, including the prohibition against excessive fines.

THIRTEENTH DEFENSE

Defendant is informed and believes and thereon alleges that to the extent any allegation or cause of action alleged in Plaintiff's Complaint relies upon any verbal or non-verbal speech or expression, including any commercial speech, such allegations or causes of action are barred by the protections of free speech and expression contained in the First Amendment of the United States Constitution.

FOURTEENTH DEFENSE

Defendant is informed and believes, and thereon alleges that, Plaintiff's Complaint was filed in bad faith and for the purposes of harassment and Defendant is entitled to its attorneys' fees in defending this action pursuant to 15 U.S.C § 1681n and 15 U.S.C. § 1681o accordingly.

FIFTEENTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole

1 or in part because any alleged communication by Defendant was truthful and/or
2 accurate when made.

3 **RESERVATION OF ADDITIONAL DEFENSES**

4 Defendant reserve the right to amend this Answer should it later discover facts
5 demonstrating the existence of new and/or additional defenses and/or should a change
6 in the law support the inclusion of new and/or additional defenses.

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8 **DEMAND FOR JURY TRIAL**

9 Defendant On-Site Manager, Inc. hereby demands trial by jury in this action.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Defendant prays judgment as follows:

- 13 1. That Plaintiff take nothing by his complaint;
14 2. That Defendant be awarded its costs herein incurred; and
15 3. For such other and further relief as the court may deem proper.

16
17 Dated: January 19, 2016

18 **Jacobson, Russell, Saltz, Nassim & de la Torre, LLP**

19 _____/S/_____
20 Michael J. Saltz, Esq.,
21 Attorneys for Defendant On-Site Manager, Inc.

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